

U.S. Department of Health and Human Services
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National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2019

Suzanne Murrin

Deputy Inspector General for Evaluation and Inspections

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Why OIG Did This Review

Background checks for employees are an important safety measure that can help protect some of the most vulnerable populations. More than 13 million beneficiaries are served by long-term-care facilities each year, including the elderly, individuals in hospice care, and individuals with intellectual disabilities.

The National Background Check Program (Program), enacted by legislation in 2010, assists States and territories (States) in developing and improving systems to conduct Federal and State background checks. Included in this legislation is a mandate that the Office of Inspector General (OIG) produce an evaluation of the Program within 180 days of Program completion. This report is the fourth in a series to supplement the mandated evaluation. In future work, we will assess the final four States to conclude the Program and the Program overall.

How OIG Did This Review

We reviewed grant-monitoring documents and financial reports to determine the extent to which the 4 States that concluded participation in 2019 had implemented 13 selected Program requirements. Additionally, we surveyed program staff from the four States to collect information on their experiences with their respective background check programs.

National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2019

Key Takeaway

Three of the four States were unable to implement all selected Program requirements, and three States did not report sufficient data to accurately assess Program outcomes.

The National Background Check Program (Program) provides grants to States to develop programs for conducting background checks of prospective long-term-care employees via States and Federal criminal history records. The beneficiaries served by long-term-care providers include some of the most vulnerable populations. Four States concluded their participation in the program in 2019: Hawaii, Ohio, Oregon, and Puerto Rico.

What OIG Found

OIG found that of the 4 States that concluded their participation in the Program in 2019, 3 States—Hawaii, Oregon, and Puerto Rico—did not implement all 13 selected Program requirements during the grant period. These States had varying degrees of State-level legal requirements and practical infrastructure for conducting background checks that affected their ability to implement select Program requirements. Primarily, these States lacked existing legislative authority and encountered challenges in coordinating between State-level departments. Two States needed to seek legislative authority to implement select Program requirements and develop needed infrastructure. One State needed to amend existing legislation to implement one Program requirement. The two States that needed to seek legislative authority also encountered challenges in coordinating with their respective State criminal justice authorities to implement background-check requirements. One State had existing legislative authority and implemented all 13 selected Program requirements.

OIG found that three of the four States—Ohio, Oregon, and Puerto Rico—did not report sufficient data to accurately assess Program outcomes. Unless all participating States consistently report quality data, Program outcomes cannot be accurately assessed.

What OIG Recommends and How the Agency Responded

The Centers for Medicare & Medicaid Services (CMS) should continue to implement OIG's prior recommendation for it to take appropriate actions to encourage States to obtain the necessary legislative authority to fully implement Program requirements. Given this report's findings, CMS should assist participating States to address the challenge of coordinating between State-level departments and require participating States to consistently submit data that allow for CMS and each State to calculate determinations of ineligibility. CMS concurred with both recommendations.

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BACKGROUND

Objective

To assess the implementation of States' National Background Check Programs for Long-Term-Care Providers concluded in 2019.^{1, 2}

The beneficiaries served by long-term-care providers include some of the most vulnerable populations.³ Among these beneficiaries are the elderly, individuals in hospice care, and individuals with intellectual disabilities.⁴ Over 13 million of these beneficiaries are served through long-term-care services in nursing homes and by other providers such as home health, hospice, and personal care service agencies.⁵

Patient abuse, patient neglect, and misappropriation of property (i.e., theft) have been identified as widespread problems that cause harm to vulnerable beneficiaries receiving long-term-care services.^{6, 7, 8} Studies have shown that some nurse aides who were convicted of abuse, neglect, or theft had previous criminal convictions that could have been detected through background checks.^{9, 10} The development of thorough background checks can provide protections for beneficiaries who rely on long-term-care services.

National Background Check Program

The National Background Check Program (Program) is a voluntary grant program that was enacted by legislation in 2010 to assist States in developing and improving systems to conduct Federal and State background checks.^{11, 12} This legislation included the mandate for OIG to produce an evaluation of the Program within 180 days of Program completion.¹³ As groups of States concluded the Program, OIG has published reports assessing their implementation of it. These reports—three in total—serve as supplements to the mandated evaluation.^{14, 15, 16} They are designed to provide recommendations and support to the Centers for Medicare & Medicaid Services (CMS) as it assists States that are continuing in the Program. This report is the fourth in a series of five reports; the fifth report will be the mandated report. See Appendix A for the reporting mandate for OIG.

The Program provides States with funding for 3 years to identify efficient, effective, and economical procedures for conducting background checks of prospective employees who will provide care to vulnerable beneficiaries in their State.¹⁷ States are eligible to receive up to \$3 million in Federal funding. States are required to match the Federal funding by spending \$1 of their own funds for every \$3 of Federal funds spent.¹⁸ States can request three additional 1-year extensions for the Program if needed, but these extensions do not come with additional Federal funding. See

Appendix B for information related to Federal grant awards and State matching funds for the States in this evaluation.

In addition to providing funding, CMS provides technical assistance and an assessment of States' progress. CMS provides these services through its technical assistance contractor (Contractor).¹⁹ The Contractor works directly with States to develop their respective programs by offering support in all aspects of Program implementation. Additionally, the Contractor monitors States' progress towards Program implementation by reviewing what are collectively known as "monitoring documents" (i.e., project narratives, Federal Financial Reports (FFRs), cost expenditures, and grantee data files) and related documentation during Program participation.

Selected Requirements for Participating States

States participating in the Program must meet a variety of broad statutory and Program requirements (collectively referred to as "Program requirements") that guide them in developing systems for conducting background checks. States have some flexibility in how they implement Program requirements. For example, States must define "direct patient access employees," but each State has flexibility in determining which types of prospective employees to include in its Program. The requirements evaluated in this report identify the types of prospective employees who should receive background checks, the sources that are used for conducting background checks, and the continuous monitoring of employees' criminal histories. See below for the list of 13 selected Program requirements evaluated in this report.²⁰

- Determine which individuals are direct patient access employees.
- Require all prospective direct patient access employees to undergo background checks.
- Include the nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints for Federal/State checks.
- Conduct checks of Federal criminal history.
- Conduct checks of State criminal history.
- Conduct checks of State abuse/neglect registry for applicants' current States of residence.
- Conduct checks of State abuse/neglect registry for applicants' prior States of residence.
- Conduct search of records of any proceedings in the State that may contain disqualifying information.

- Notify facilities and providers of convictions identified through continuous monitoring.²¹
- Report convictions to required databases.²²

Required Types of Background Checks. To conduct thorough background checks, States must include several types of background checks in their Program implementation.²³ The required checks include the following: (1) a search of any databases and abuse registries of all known States in which the prospective employee lived;²⁴ (2) a check of State criminal history records; (3) a fingerprint-based check of Federal Bureau of Investigation (FBI) criminal history records;^{25, 26} and (4) a search of the records of any proceedings in the State that may contain disqualifying information about the prospective employee.^{27, 28}

Care Settings That Require Background Checks. Participating States must implement all required background checks for prospective employees among the following nine types of long-term-care facilities or providers:

- skilled nursing facilities;
- nursing facilities;
- home health agencies;
- providers of hospice care;
- long-term-care hospitals;
- providers of personal care services;
- providers of adult day care;
- residential care providers that arrange for long-term-care services or provide long-term-care services; and
- intermediate-care facilities for individuals with intellectual disabilities.²⁹

State Considerations With Implementing Requirements. States enter the Program with varying degrees of practical infrastructure and State-level legal requirements for conducting background checks. The infrastructure needed for conducting background checks often includes:

- technology for conducting checks of registries, State records, and Federal records;
- program knowledge of management and development of a background check program;
- a Statewide system;
- State funding;
- policies and procedures for conducting background checks and making determinations of ineligibility;
- techniques for determining ineligibility;

- the ability to collect, share, and secure data; and
- coordination with law enforcement.

Some States enter the Program in a developmental stage, seeking to establish infrastructure with the goal of becoming operational, while other States enter the Program in the operational stage, seeking to improve functional systems. For example, States in the developmental stage may not have a Statewide system for conducting any of the required checks. In contrast, States in the operational stage may already have much of the needed infrastructure and conduct many of the required checks.

States may require new or amended State legislation to implement Program requirements regardless of the level of pre-existing infrastructure that States have when they enter the Program.³⁰ States in the developmental stage may need to obtain legislative authority to build Program infrastructure, while States in the operational stage may need to seek updated legislative authority to improve existing infrastructure. A State has flexibility in determining the appropriate order of seeking legislation and developing its program. One State might begin building program infrastructure (e.g., information systems) while working with its legislature to obtain the authority to conduct background checks. Another State might decide to obtain legislative authority before building any program infrastructure.

Required Quarterly Reporting of Data. States are required to submit quarterly reports to CMS' Contractor that include data to track the types and outcomes of background checks that are conducted.³¹ The data file that each State submits to the Contractor should contain cumulative data from registry checks, State criminal history records, and FBI criminal history records (e.g., provider type, fingerprint collection date, employment eligibility determination, employment eligibility determination date). The Contractor provides States in the Program with guidance and technical assistance regarding the data elements that should be contained in the file and as needed, for submitting their data. Additionally, in collaboration with the Contractor, CMS fully developed a Background Check System (BCS) that States can use to collect and report data that meets reporting requirements. Some States enter the Program with an existing system for collecting and reporting data, while other States enter the Program without an established system. States with existing systems may need to modify their system to meet Program reporting requirements or may choose to implement the BCS.

Related Reports

OIG has published several evaluations and issued multiple recommendations to CMS regarding the importance of background checks. OIG released its first report specific to the Program in 2016 with two recommendations: for CMS to (1) continue to work with participating States to fully implement their background check programs, and (2) improve required reporting by States to ensure that CMS can conduct effective oversight.³² CMS implemented these recommendations by doing the following: (1) providing States with individual technical assistance, data review, and data

validation, and developing the National Background Check Program Interim Progress Report; and (2) providing States with assigned project officers, a technical assistance contractor, teleconferences, and a website. In 2019, OIG released its second and third Program-specific reports with a recommendation that CMS take appropriate action to encourage participating States to obtain necessary authorities to fully implement Program requirements.^{33, 34} CMS continues to work with States to implement this recommendation by encouraging States to take advantage of technical assistance available from the Contractor. See Appendix C for additional detail and descriptions of related work.

Methodology

For each of the four State programs that concluded in 2019, we evaluated the State's ability to implement 13 selected Program requirements during its grant participation for all facility and provider types, as defined by the Program.³⁵

Data Collection. We obtained data from several sources to conduct our analysis. From CMS, we collected monitoring documents (i.e., project narratives, Federal Financial Reports (FFRs), cost expenditures and grantee data files) submitted by States related to their implementation of Program requirements. From State officials in the four States, we collected survey responses regarding Program outcomes and effectiveness. We verified with State officials that the data we obtained from these sources were consistent with State records.

We collected data from the four States to assist in preparation of the congressionally mandated report that will evaluate all participating States following the end of the Program. We surveyed the States about practices that they found to be the most appropriate, efficient, and effective for conducting background checks.

Data Analysis. We used State surveys and CMS's monitoring documents to assess States' progress in meeting the requirements. We evaluated the number and rate of background checks that resulted in determinations of ineligibility for employment during the States grant participation. Additionally, we evaluated each States' expenditures for the Program and the cost of individual background checks.

Standards

We conducted this study in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

Three of the four States that concluded the Program in 2019 did not implement all requirements, primarily because of not having existing legislative authority and challenges with coordination

Background checks can provide protections from abuse, neglect, and theft for beneficiaries who rely on long-term-care services. Three States—Hawaii, Puerto Rico, and Oregon—were unable to implement all selected Program requirements, primarily because of not having existing State legislative authority and because of challenges with coordination between State-level departments. Hawaii and Puerto Rico entered the Program seeking to obtain legislative authority and develop Program infrastructure. While developing the capacity to conduct background checks, each State experienced challenges in coordinating between departments within the State. Oregon entered the Program seeking to obtain legislative authority to improve and expand the infrastructure of its existing background check system. Ohio entered the Program with capacity to conduct manual background checks. The State already had existing legislative authority and the department responsible for conducting background checks did not need to coordinate with other departments to implement all selected Program requirements during the grant period.

States were unable to implement Program requirements and develop needed infrastructure because of not having existing legislative authority

State legislation is needed to provide the authority and build the infrastructure to implement Program requirements; however, three States—Hawaii, Puerto Rico, and Oregon—needed to seek or amend legislation. Hawaii and Puerto Rico each needed to seek legislative authority to implement select Program requirements and develop needed infrastructure. Oregon needed to amend existing legislation to implement one Program requirement.

Hawaii was unable to implement 4 of the 13 selected Program requirements primarily because of not having existing legislative authority. The State was able to obtain legislative authority for three of the four unimplemented requirements—requiring all prospective direct patient access employees to undergo background checks; including all nine facility and provider types; and establishing a Statewide program—a month after Hawaii’s participation in the grant ended. The legislation needed to implement notification to facilities and providers of convictions identified through continuous monitoring was still in progress as of December 2019.

Puerto Rico entered the Program without legislative authority or a centralized system or for conducting background checks. Prior to 2015, the Puerto Rico Department of Health did not have legislative authority to conduct checks of criminal histories for employees in any of the facilities or provider types defined by the Program. The facilities and providers were responsible for conducting their own name-based background checks through local law enforcement. A Puerto Rican law enacted in 2015 gave the Department of Health the authority to conduct background checks by collecting fingerprints for all nine facilities and provider types required by the Program. This change in law allowed Puerto Rico to begin the process of developing the needed infrastructure for its first statewide background check system.

Oregon was unable to implement 1 of the 13 selected Program requirements because it needed to amend existing legislative authority. The State was unable to amend the legislation to meet the FBI's requirement for language to notify facilities and providers of convictions identified through continuous monitoring.

For two States, challenges with coordinating between departments further limited their ability to conduct background checks and impeded implementation of Program requirements

After developing the needed infrastructure to conduct background checks, two States—Hawaii and Puerto Rico—encountered further challenges in becoming operational because of challenges in coordinating with their respective State criminal justice authorities.

Hawaii was unable to coordinate with its Criminal Justice Data Center to implement one of the selected Program requirements within the timeframe of the grant. Delays in coordination added to the time needed to implement the Program requirement and further delayed the State's ability to notify facilities and providers of convictions identified through continuous monitoring.

Puerto Rico's challenges in coordinating between departments affected the State's ability to become operational and implement 10 of the selected Program requirements. Puerto Rico experienced delays and technical difficulties as it developed its program and worked with its Department of Justice to receive approval from the FBI to conduct noncriminal background checks. The Department of Health experienced delays while waiting for the Department of Justice to set up its new background check platform and to negotiate with the FBI for clearance to transmit civil fingerprints. In addition to these delays, technical difficulties occurred when the Department of Health and the Department of Justice began integrating their background check systems. Currently, Puerto Rico has the needed infrastructure in place to be able to begin conducting background checks once the systems are fully integrated.

See Exhibit 1 for information on each State’s implementation status for each of the 13 selected Program requirements. Appendix E provides additional details in State “scorecards.”

Exhibit 1: States varied in their ability to implement the selected Program requirements.

| Selected Program Requirements | HI | OH | OR | PR |
|---|------|----|----|----|
| Determine which individuals are “direct patient access employees.” | ● | ● | ● | ● |
| Require all prospective direct patient access employees to undergo background checks. | ⊖ | ● | ● | ⊖ |
| Include the nine facility and provider types defined by the Program. | ⊖ | ● | ● | ⊖ |
| Identify disqualifying offenses. | ● | ● | ● | ● |
| Establish a Statewide program. | ⊖ | ● | ● | ● |
| Collect applicant fingerprints. (For State and Federal checks) | ● | ● | ● | ⊖ |
| Conduct checks of: | | | | |
| State criminal history. | ● | ● | ● | ⊖ |
| Federal criminal history. | ● | ◐† | ◐† | ⊖ |
| Conduct checks of State abuse/neglect registry for: | | | | |
| Applicant’s States of residence | ● | ● | ● | ⊖ |
| Applicant’s prior State(s) of residence | ● | ● | ⊖ | ⊖ |
| Conduct search of records of any proceedings in the State that may contain disqualifying information. | ● | ● | ● | ⊖ |
| Notify facilities and providers of convictions identified through continuous monitoring. | ⊖ | ● | ⊖ | ⊖ |
| Report convictions to required databases. | N/A* | ● | ● | ⊖ |

● Meets grant requirements ◐ Meets grant requirement with exceptions ⊖ Does not meet grant requirements

Source: OIG analysis of States’ implementation of selected Program requirements, 2020.

*In Hawaii, convictions are reported to the required databases by the Department of the Attorney General.

† In Ohio, checks of Federal criminal history are mandatory for any prospective employee not able to provide proof of residency for 5 years. In Oregon, about 40 percent of prospective employees are receiving checks of Federal criminal history.

Three of the four States did not report sufficient data to accurately assess Program outcomes

CMS is responsible for conducting oversight of the grants that States receive to implement the Program, but without the consistent reporting of sufficient data (e.g., cumulative data, all required data elements) from all participating States, Program outcomes cannot be accurately assessed. Three of the four States that completed the Program in 2019 either failed to submit data for all the types of background checks that they conducted or submitted data to CMS that was not usable to determine Program outcomes. Although Hawaii conducted background checks for employees in only two facility and provider types, it did submit to CMS cumulative data on the results of registry, State, and Federal background checks for employees in these care settings during the Program. See Exhibit 2 for an analysis of data submitted by the States to CMS.

Oregon entered the Program with an existing system for collecting and reporting data for the State's purposes; however, the system was not configured to report the data elements required by the Program. The State asked its vendor to configure the existing system to report the data elements required by the Program, but the State ultimately decided to replace the existing system with the CMS- and Contractor-provided BCS. The BCS had not been implemented by Program completion; however, it was scheduled to be implemented by summer 2020. Oregon submitted data to sufficiently calculate ineligibility determinations using its existing system for only 9 months in 2014.

Although Ohio submitted data from the start of its participation in the Program, the data did not include all required data elements. The data that were reported were limited to data gathered from registry checks and did not include data from State and Federal background checks. Determinations of ineligibility could not be calculated because of the lack of data in the fields for final overall fitness determination and final fitness determination notification.

Puerto Rico used Program resources to develop all new infrastructure needed to conduct background checks. Despite the progress in Puerto Rico's development during the Program, it did not conduct any background checks during the grant period and therefore did not have any determinations of ineligibility to report.

Exhibit 2: Only two States provided the numbers of background checks conducted and determinations of ineligibility made during Program participation.

| State | Completed Checks | Checks With Determinations of Ineligibility | Percentage Determined Ineligible |
|------------------|-------------------------|--|---|
| Hawaii | 820 | 12 | 1.46% |
| Ohio* | N/A | N/A | N/A |
| Oregon** | 44,637 | 1,434 | 3.21% |
| Puerto Rico*** | N/A | N/A | N/A |
| Total**** | 45,457 | 1,446 | N/A |

Source: OIG analysis of State background-check data, 2020.

*Ohio's data was missing variables needed to calculate determinations of ineligibility.

**Oregon's data reflects completed checks from January 2, 2014, until October 29, 2014.

***Puerto Rico did not conduct background checks during the grant period.

****The percentage determined ineligible is represented as N/A since the data that the States report are not comparable.

RECOMMENDATIONS

By preventing prospective employees with disqualifying offenses from being employed by long-term-care facilities and providers, background checks can help protect beneficiaries who rely on long-term-care services from abuse, neglect, and theft. By implementing the 13 selected Program requirements, States are better able to ensure that the prospective employees who need background checks are being screened, that multiple sources are used to conduct checks, and that criminal records are being continuously monitored. When States consistently report quality data, CMS and each State can calculate the determinations of ineligibility that are occurring as a result of the State's background check program. This could provide a more complete picture of the effectiveness of the State's background check program.

The findings of this report are consistent with our previous assessments of the Program. They provide further support for one open OIG recommendation and illustrate that CMS could do more to ensure that Program requirements are implemented.

To address previous OIG recommendations, CMS made efforts to assist States with their unique needs in implementing Program requirements and reporting of required data. CMS' efforts included identifying potential barriers; providing States with targeted technical assistance; and sharing examples of lessons learned and best practices. CMS developed the "National Background Check Program Interim Progress Report" tool to evaluate States' progress towards implementation of Program requirements and began reviewing and validating quarterly data submitted by States. Additionally, to address previous issues, such as coordination between State-level departments, CMS developed a resource library and yearly in-person training meetings. CMS continues to provide this assistance to States through the Contractor.

Despite CMS' efforts in these areas, it could do more to ensure that States are implementing Program requirements and that States consistently follow CMS guidance. In addition, CMS should continue to work towards implementing the recommendation that OIG made in a prior report for it to take appropriate actions to encourage States to obtain the necessary authority to fully implement Program requirements.³⁶ In this report, we make two additional recommendations.

We recommend that CMS:

Assist participating States in addressing the challenge of coordination between State-level departments.

For the three States that continue participation in the Program, CMS should use the "National Background Check Program Interim Progress Report" to evaluate States'

progress towards implementation of Program requirements and, as necessary, to provide States with targeted technical assistance to develop a strategy for addressing the challenge of coordination between departments within the State.

Require that participating States consistently submit data that allow for CMS and each State to calculate determinations of ineligibility.

For the three States that continue participation in the Program, CMS should ensure that they submit data sufficient to allow for the calculation of determinations of ineligibility. CMS can accomplish this by informing States when data do not meet the minimum data standards and providing States with technical assistance to resubmit data according to the set standards. Specifically, the States' quarterly reports should include cumulative data for the following data fields: record identifier, final overall fitness determination, and final fitness determination notification date.

AGENCY COMMENTS AND OIG RESPONSE

CMS concurred with both of our recommendations.

In response to the first recommendation, CMS stated that it has created the National Background Check Program Resource Library and has provided States with consultation and guidance, as needed, to address their challenge of coordination between State-level departments. For the three States that continue participation in the Program, CMS will assist States in developing a strategy for addressing their individual coordination challenges based on lessons learned. Additionally, CMS will also encourage States to use the resources available to them from CMS and the Contractor.

In response to the second recommendation, CMS stated that it plans to encourage the three States continuing in the Program to install and utilize the Background Check System developed by CMS or modify their current system in order to meet the Program's data-reporting requirements. Also, CMS will proactively inform States when their data do not meet the minimum data standards and provide States with additional technical expert assistance to address necessary modifications to resubmit data according to the standard.

OIG appreciates that CMS is already taking steps to implement our recommendations. We encourage CMS to use the "National Background Check Program Interim Progress Report" to evaluate States' progress towards implementation of Program requirements. We also encourage CMS to continue to require that States meet minimum data standards. For instance, CMS should require that States' quarterly reports include cumulative data for the following data fields: record identifier, final overall fitness determination, and final fitness determination notification date.

For the full text of CMS' comments, see Appendix F.

DETAILED METHODOLOGY

Scope

We evaluated four States that concluded Program participation in 2019: Hawaii, Ohio, Oregon, and Puerto Rico. See Appendix B for a listing of all States that have participated in the Program or are continuing in the Program.

Congress directed OIG to analyze the most appropriate, efficient, and effective procedures for conducting background checks, as well as to assess the Program cost. We will reserve these analyses for the final rollup report once all States have completed the Program, which could occur as late as 2024. See Appendix A for the reporting mandate.

Data Collection

CMS Grant Monitoring Documents. We obtained from CMS the reports and documents submitted by States related to their implementation of the National Background Check Program (Program). We collected from CMS and the technical assistance contractor (Contractor) the monitoring documents that they received from each State that concluded its Program participation. We obtained the source amounts for Program funding from the Federal Financial Reports (FFRs), and we obtained Program costs from the Contractor.

Surveys of State Officials. As each State's Program concluded, we surveyed State officials regarding the overall operation of the State's Program and the State's experience with the Program. We followed up with each State to verify survey responses and clarify any responses that were unclear.

Operation of State's Program. We surveyed States regarding the implementation of Program requirements during the grant period. See this report's background for the list of the 13 Program requirements evaluated in this report.

States' experience with the Program. We surveyed States regarding their experience with the Program. We asked States about challenges that they faced in implementing program requirements. A full summary of States experiences will be included in the final mandated report.

Data Analysis

We reviewed the documents that we obtained from CMS, the Contractor, and State officials to evaluate States' participation and progress in the Program during their respective grant periods. We evaluated States' implementation of 13 selected Program requirements to identify which prospective employees should receive checks; the sources that are used for conducting checks; and the continuous monitoring of employees' criminal histories. We also reviewed the number of background checks that States conducted and analyzed the rates of determinations of ineligibility for prospective employees. Additionally, we reviewed the financial reports to identify the overall Program costs, including startup cost, administrative cost, and total costs.

APPENDIX A

Mandate for National Background Check Program Evaluation and Reports

P.L. No. 111-148, § 6201(a)(7)

§ 6201(a)(7) EVALUATION AND REPORT.—

(A) EVALUATION.—

(i) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct an evaluation of the nationwide program.

(ii) INCLUSION OF SPECIFIC TOPICS.—The evaluation conducted under clause (i) shall include the following:

(I) A review of the various procedures implemented by participating States for long-term care facilities or providers, including staffing agencies, to conduct background checks of direct patient access employees under the nationwide program and identification of the most appropriate, efficient, and effective procedures for conducting such background checks.

(II) An assessment of the costs of conducting such background checks (including start up and administrative costs).

(III) A determination of the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for long-term care facilities or providers.

(IV) An assessment of the impact of the nationwide program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable.

(V) An evaluation of other aspects of the nationwide program, as determined appropriate by the Secretary.

(B) REPORT.—Not later than 180 days after the completion of the nationwide program, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the results of the evaluation conducted under subparagraph (A).

APPENDIX B

State Expenditures for the National Background Check Program

| State | Federal Funds | State Funds | Total |
|---------------|--------------------|--------------------|---------------------|
| Hawaii | \$795,742 | \$328,999 | \$1,124,741 |
| Ohio | \$1,365,464 | \$455,244 | \$1,820,708 |
| Oregon | \$2,870,209 | \$1,000,000 | \$3,870,209 |
| Puerto Rico* | \$1,982,788 | \$2,327,920 | \$4,310,708 |
| Total* | \$7,014,203 | \$4,112,163 | \$11,126,366 |

Source: Final Federal Financial Reports (FFRs)

* Puerto Rico received an extension for submitting its final FFR. The source here is Puerto Rico's expenditures from the State's last quarterly reports submitted during the Program.

**Results are rounded.

APPENDIX C

Related OIG Reports

NOTE: This current report and four of the seven reports listed below—i.e., our August 2019 report (OEI-07-18-00290), our April 2019 report (OEI-07-16-00160), our 2016 report (OEI-07-10-00420), and our 2012 report (OEI-07-10-00421)—all examine the same grant program. The 2016 and 2012 reports refer to it by slightly different names.

National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018 (OEI-07-18-00290)

In August 2019, OIG published an evaluation of the 11 States that concluded Program participation in 2017 and 2018. These 11 States varied as to the degree to which they were able to implement Program requirements. Two States implemented all selected Program requirements. Nine States did not implement all the selected Program requirements, primarily because of a lack of legislative authority for certain Program requirements. We encouraged CMS to implement an open recommendation from the April 2019 report—namely, to take appropriate actions to encourage States to obtain the necessary legislative authority to fully implement Program requirements. We did not offer any new recommendations.

National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016 (OEI-07-16-00160)

In April 2019, OIG published an evaluation of the National Background Check Program for Long-Term-Care Providers for the 10 States that concluded their participation by 2016. These 10 States varied as to the degree to which they implemented Program requirements. Seven of the States implemented all or most of the selected requirements. Three States did not have the necessary authority through State legislation and could not fully implement background check programs.

In this evaluation, OIG recommended that CMS take appropriate action to encourage participating States to obtain necessary authorities to fully implement Program requirements. CMS concurred with this recommendation and continues working to implement this recommendation by providing supporting pre-legislative research, assisting States in developing revised legislative language, and provided technical assistance to develop and promote effective legislation.

National Background Check Program for Long-Term-Care Employees: Interim Report (OEI-07-10-00420)

In 2016, OIG published an evaluation of the National Background Check Program for Long-Term-Care Employees that described the overall State implementation status during the first 4 years of the Program. The 25 States participating in the grant Program reported having achieved varying levels of implementation. Fifteen States

did not conduct continuous monitoring of criminal convictions. Thirteen States did not obtain legislation that would enable them to conduct background checks. Ten States had not implemented processes to collect fingerprints. The study provided CMS with information to assist in its ongoing administration of the Program.

In this evaluation, OIG recommended that CMS continue working with States to fully implement their background check programs. Additionally, OIG recommended that CMS continue working with participating States to improve the quality of their required data reporting to ensure that CMS can conduct effective oversight of the program. CMS concurred with both recommendations and implemented the first recommendation by providing States with individual technical assistance, data review, and data validation. CMS implemented the second recommendation by providing States with assigned project officers, a technical assistance contractor, teleconferences, and a website.

Home Health Agencies Conducted Background Checks of Varying Types (OEI-07-14-00130)

In 2015, OIG published an evaluation of the varying types of background checks conducted by home health agencies (HHAs); we reviewed selected employees whose convictions were likely to disqualify them from HHA employment. We found that 4 percent of HHA employees had at least one criminal conviction. FBI criminal history records were not detailed enough to enable us to definitively determine whether employees with criminal convictions should have been disqualified from HHA employment.

State Requirements for Conducting Background Checks on Home Health Agency Employees (OEI-07-14-00131)

In 2014, OIG published an evaluation of State requirements for conducting background checks on HHA employees and surveyed State officials about their respective background check programs. The evaluation found that 41 States required HHAs to conduct background checks on prospective employees. Of the 10 States that had no requirements for background checks, 4 States reported that they planned to implement such requirements in the future. Thirty-five States specified convictions that disqualified individuals from employment, and 16 States allowed an individual who had been disqualified from employment to apply to have his/her conviction(s) waived.

Criminal Convictions for Nurse Aides with Substantiated Findings of Abuse, Neglect, and Misappropriation (OEI-07-10-00422)

In 2012, OIG published an evaluation that found nurse aides with substantiated findings of abuse, neglect, and/or misappropriation of property also had previous criminal convictions that could have been detected through background checks. Nineteen percent of nurse aides with substantiated findings had at least one conviction in their criminal history records prior to their substantiated finding. Among these nurse aides, the most common conviction (53 percent) was for crimes against property (e.g., burglary, shoplifting, and writing bad checks).

Nationwide Program for National and State Background Checks for Long-Term-Care Employees—Results of Long-Term-Care Provider Administrator Survey (OEI-07-10-00421)

In 2012, OIG conducted an evaluation of the nationwide Program for national and State background checks that surveyed long-term-care provider administrators. We found that 94 percent of administrators conducted background checks on prospective employees. Twenty-three percent of surveyed administrators believed that their organizations' background check procedures reduced the pool of prospective employees.

Nursing Facilities' Employment of Individuals with Criminal Convictions (OEI-07-09-00110)

In 2011, OIG published an evaluation of individuals with criminal convictions employed in nursing home facilities that found 92 percent of nursing facilities employed at least one individual with at least one criminal conviction. Overall, 5 percent of nursing facility employees had at least one criminal conviction. In this evaluation, a national survey of nursing home facility administrators found that almost all facilities conducted some form of background check.

OIG full reports can be found at www.oig.hhs.gov.

APPENDIX D

Beginning and Ending Dates of States' Respective Programs

| State | Grant Award Date | Scheduled Grant End Date* | Actual Grant End Date |
|----------------------|------------------|---------------------------|-----------------------|
| Delaware | 9/30/2010 | | 9/29/2013 |
| Illinois | 12/31/2010 | | 12/30/2014 |
| Maryland | 1/31/2013 | | 1/30/2016 |
| Alaska | 9/30/2010 | | 9/29/2016 |
| Connecticut | 9/30/2010 | | 9/29/2016 |
| Florida | 9/30/2010 | | 9/29/2016 |
| Missouri | 9/30/2010 | | 9/29/2016 |
| Rhode Island | 9/30/2010 | | 9/29/2016 |
| District of Columbia | 12/31/2010 | | 12/30/2016 |
| New Mexico | 12/31/2010 | | 12/30/2016 |
| California | 2/1/2011 | | 1/31/2017 |
| Oklahoma | 4/5/2011 | | 4/4/2017 |
| Kentucky | 5/20/2011 | | 5/19/2017 |
| Michigan | 5/20/2013 | | 5/19/2017 |
| Utah | 7/11/2011 | | 7/10/2017 |
| North Carolina | 7/13/2011 | | 7/12/2017 |
| Maine | 10/1/2011 | | 9/30/2017 |
| Nevada | 10/1/2011 | | 9/30/2017 |
| West Virginia | 10/1/2011 | | 9/30/2017 |
| Georgia | 7/25/2012 | | 7/24/2018 |
| Minnesota | 8/30/2012 | | 7/31/2018 |
| Hawaii* | 12/17/2012 | | 12/16/2018 |
| Ohio | 4/22/2013 | | 4/21/2019 |
| Oregon | 7/29/2013 | | 7/28/2019 |
| Puerto Rico** | 12/17/2012 | | 12/16/2019 |
| Kansas | 7/1/2015 | 6/30/2021 | |
| Idaho*** | 6/1/2018 | 5/31/2021 | |
| Mississippi*** | 6/1/2018 | 5/31/2021 | |
| Wisconsin**** | 6/1/2018 | | 6/26/2020 |

Source: CMS Notice of Award and the CMS technical assistance contractor (Contractor) website. Dates reflect schedule as of July 8, 2020.

* Hawaii concluded participation in December 2018 and had 90 days following Program participation to submit its closeout documents. Since its closeout documents were not due until 2019, Hawaii is included with the evaluation of the 2019 States.

** Puerto Rico was awarded an additional 1-year extension in 2018 because of natural disasters experienced by the State.

***Idaho and Mississippi have the option of extending their grant periods to 2024. Extensions may be granted closer to States' respective grant end dates.

****Wisconsin withdrew from the Program early.

APPENDIX E

State-by-State Implementation of Selected Program Requirements

This appendix summarizes State-by-State implementation of selected Program requirements, as drawn from CMS documents (e.g., financial and progress reports) submitted by States. We also highlight information specific to individual State programs, such as facility and provider types included in the background check programs; State and Federal funding for the Program; numbers of checks; and rates of determinations of ineligibility. Additionally, we note the cost of individual checks in each State, which varies in many cases as a result of States' flexibility in program setup (e.g., screening vendors can set their fees, and States can set administrative fees).

This appendix also lists State-reported Program costs as defined by CMS. Startup (developmental) costs are expenses associated with developing a program or system—generally, one-time or setup costs. Administrative (operational and incremental) costs are ongoing expenses necessary to operate a program (e.g., staff and maintenance) and recurring expenses to process background checks (e.g., fees for State police, vendor fees, etc.).



Hawaii

Grant Period: 12/17/2012–12/16/2018

Program Scorecard*

| | |
|--------------|--|
| 9/13 | Requirements Implemented |
| 2/9 | Required Provider Types Implemented |
| 820 | Number of Checks Completed |
| 12 | Total Determinations of Ineligibility |
| 808 | Total Determinations of Eligibility |
| 1.46% | Percentage Ineligible |
| \$83 | Cost of an Individual Background Check |

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- ⊖ Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- ⊖ Establish a Statewide program.
- Collect applicants' fingerprints.
- Conduct checks of:
 - State criminal history
 - Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - Applicant's State of residence
 - Applicant's prior State(s) of residence
- Conduct records search of any proceedings in the State that may contain disqualifying information.
- ⊖ Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

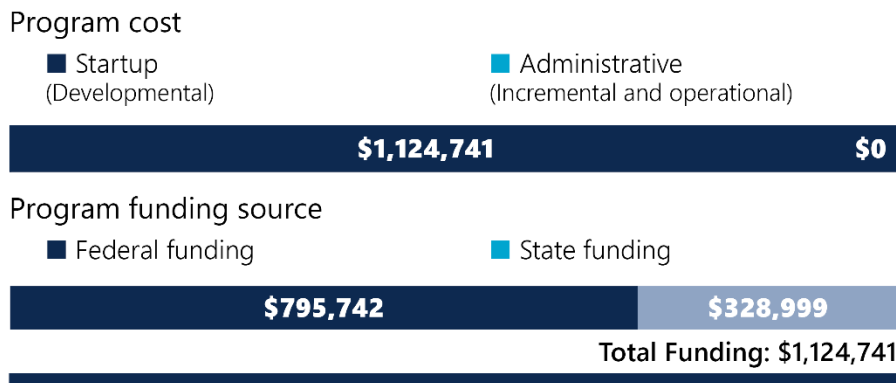
Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- ⊖ Home health agencies
- ⊖ Providers of hospice care
- † Long-term-care hospital
- ⊖ Providers of personal care services
- ⊖ Providers of adult day care
- ⊖ Residential care providers that arrange for long-term-care services or provide long-term-care services
- ⊖ Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement with exceptions
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**



* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† Hawaii does not have long-term-care hospitals.



Program Scorecard*

13/13

Requirements Implemented

9/9

Required Provider Types Implemented

-

Number of Checks Completed

-

Total Determinations of Ineligibility

-

Total Determinations of Eligibility

-

Percentage Ineligible

\$22-\$35

Cost of an Individual Background Check

Ohio

Grant Period: 04/22/2013–04/21/2019

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
 - Require all direct patient access employees to undergo background checks.
 - Include nine facility and provider types defined by the Program.
 - Identify disqualifying offenses.
 - Establish a Statewide program.
 - Collect applicants' fingerprints.
- Conduct checks of:
- State criminal history
 - ⓪ Federal criminal history
- Conduct checks of State abuse/neglect registries for:
- Applicant's State of residence
 - Applicant's prior State(s) of residence
- Conduct records search of any proceedings in the State that may contain disqualifying information.
 - Notify facilities and providers of convictions identified through continuous monitoring.
 - Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⓪ Meets grant requirement with exceptions
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Startup (Developmental)
- Administrative (Incremental and operational)

\$65,787

\$1,690,076

Program funding source

- Federal funding
- State funding

\$1,365,464

\$455,244

Total Funding: \$1,820,708

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.



Oregon

Grant Period: 07/29/2013–07/28/2019

Program Scorecard*

11/13

Requirements Implemented

6/9

Required Provider Types Implemented

44,637

Number of Checks Completed

1,434

Total Determinations of Ineligibility

38,929

Total Determinations of Eligibility

3.21%

Percentage Ineligible

\$50

Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- † Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.
- Conduct checks of:
 - State criminal history
 - Ⓛ Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - Applicant's State of residence
 - ⊖ Applicant's prior State(s) of residence
- Conduct records search of any proceedings in the State that may contain disqualifying information.
- ⊖ Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- † Home health agencies
- † Providers of hospice care
- † Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- Ⓛ Meets grant requirement with exceptions
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Startup (Developmental)
- Administrative (Incremental and operational)



Program funding source

- Federal funding
- State funding



Total Funding: \$3,870,209

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† These facilities and providers have specific legislation to conduct their own checks..



Puerto Rico

Grant Period: 12/17/2012–12/16/2019

Program Scorecard*

3/13

Requirements Implemented

0/9

Required Provider Types Implemented

-

Number of Checks Completed

-

Total Determinations of Ineligibility

-

Total Determinations of Eligibility

-

Percentage Ineligible

\$70

Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- ⊖ Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- ⊖ Collect applicants' fingerprints.
- Conduct checks of:
 - ⊖ State criminal history
 - ⊖ Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - ⊖ Applicant's State of residence
 - ⊖ Applicant's prior State(s) of residence
- ⊖ Conduct records search of any proceedings in the State that may contain disqualifying information.
- ⊖ Notify facilities and providers of convictions identified through continuous monitoring.
- ⊖ Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- ⊖ Skilled nursing facilities
- ⊖ Nursing facilities
- ⊖ Home health agencies
- ⊖ Providers of hospice care
- ⊖ Long-term-care hospital
- ⊖ Providers of personal care services
- ⊖ Providers of adult day care
- ⊖ Residential care providers that arrange for long-term-care services or provide long-term-care services
- ⊖ Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement with exceptions
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Startup (Developmental)
- Administrative (Incremental and operational)

\$4,310,708 **\$0**

Program funding source

- Federal funding
- State funding

\$1,982,788 **\$2,327,920**
Total Funding: \$4,310,708

* Derived from States' reports to CMS and States' survey responses.

** Puerto Rico received an extension for the submission of the State's Final Federal Financial Report. The source is Puerto Rico's expenditures from the State's last quarterly reports submitted during the Program. Results are rounded.

APPENDIX F

Agency Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES


Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: August 14, 2020

TO: Suzanne Murrin
Deputy Inspector General for Evaluation and Inspections
Office of the Inspector General

FROM: Seema Verma
Administrator
Centers for Medicare & Medicaid Services



SUBJECT: Office of Inspector General (OIG) Draft Report - National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2019 (OEI-07-20-00180)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to ensuring Medicare and Medicaid beneficiaries in long term care facilities receive high-quality care.

Since its implementation in 2010, the National Background Check Program (NBCP) has awarded grants to 29 states and U.S. territories to identify efficient, effective, and economical procedures for long term care facilities and providers to conduct background checks on a statewide basis for all potential direct patient access employees. The goal of the program is to prohibit the hiring of employees who have histories of abuse or relevant criminal violations to serve the vulnerable long term care population. To date, CMS has awarded nearly \$64 million so that states may design their comprehensive national background check programs.

To support grantee states in the implementation of the NBCP, CMS has contracted with CNA, a non-profit research and analysis company, to provide technical assistance in all aspects of the program's implementation, including assisting states to develop strategies to address challenges of coordination between State-level departments. Since the inception of the NBCP, CMS has been aware of challenges involved in the coordination between State Departments of Health and their State criminal justice departments, as well as Governors' offices and State legislative branches. In an effort to address these challenges, CMS has shared lessons learned and best practices among the states and developed tools and resources for targeted technical assistance. Specifically, CMS worked with states to establish the National Forum for Background Checks, represented by both current and graduated NBCP states. Additionally, CMS and CNA developed the NBCP Technical Assistance Website for States to access resources related to the NBCP and submit requests for technical assistance.¹ The Website includes the NBCP Resource Library, a comprehensive collection of original resource documents written specifically for NBCP participants to navigate common implementation challenges.² CMS's focus has been on

¹ The National Background Check Program Technical Assistance Website. <https://www.bgcheckinfo.org/>.

² National Background Check Program Resource Library. <https://www.bgcheckinfo.org/resources>

providing a growing library of tools and resources for grantee States to draw from as they work to meet the grant requirements for graduation from the NBCP.

CMS also works closely with grantee states to help address challenges and barriers to implementing the program requirements around reporting consistent data on key elements of their grant activities. Understanding that data collected from states helps CMS ensure that each state's program is meeting the background check requirements, CMS developed the Background Check System (BCS) for States to submit data that meet the NBCP data reporting requirements. Given the NBCP is voluntary grant program and CMS does not have the authority to require states to install and use BCS, several states opted to utilize their own systems and subsequently submitted data that do not meet NBCP data reporting requirements. As of July 2020, 22 states have voluntarily incorporated the BCS and successfully submitted data that met program reporting requirements. For states that have opted to utilize their existing systems, CMS and CNA provide targeted technical assistance to states to configure their systems in order to meet the NBCP data reporting requirements. As OIG noted, CMS also developed the "National Background Check Program Interim Progress Report" tool to evaluate states' progress towards implementation of Program requirements and began reviewing and validating quarterly data submitted by States.

OIG's recommendations and CMS' responses are below.

OIG Recommendation

Assist participating States in addressing the challenge of coordination between State-level departments.

CMS Response

CMS concurs with the OIG's recommendation. CMS created the NBCP Resource Library and has provided states with consultation and guidance as needed in order to address states' challenge of coordination between state-level departments. For the three states that continue participation in the NBCP, CMS will assist states in developing a strategy for addressing their individual coordination challenges based on lessons learned from states that have successfully navigated similar challenges. CMS will also encourage states to use the resources available to them from CMS and the technical assistance contractor, CNA, in navigating their individual challenges.

OIG Recommendation

Require that participating States consistently submit data that allow for CMS and each State to calculate determinations of ineligibility.

CMS Response

CMS concurs with the OIG's recommendation. For the three States that continue participation in the NBCP, CMS will encourage states to install and utilize the Background Check System developed by CMS or modify their current system in order to meet the NBCP data reporting requirements. CMS will proactively inform states when their data do not meet the minimum data standards and provide states with additional technical expert assistance to address necessary modifications to resubmit data according to the set standards.

CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.

ACKNOWLEDGMENTS AND CONTACT

Acknowledgments

Andrea Staples served as the team leader for this study, and Haley Lubeck served as the lead analyst. Others in the Office of Evaluation and Inspections who conducted the study include William Ash. Office of Evaluation and Inspections staff who provided support include Kevin Farber, Christine Moritz, and Michael Novello.

This report was prepared under the direction of Brian Whitley, Regional Inspector General for Evaluation and Inspections in the Kansas City regional office, and Jennifer King, Deputy Regional Inspector General.

Contact

To obtain additional information concerning this report, contact the Office of Public Affairs at Public.Affairs@oig.hhs.gov. OIG reports and other information can be found on the OIG website at oig.hhs.gov.

Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

ABOUT THE OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These audits help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

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The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

ENDNOTES

¹ Hawaii concluded participation in December 2018 and had 90 days following Program participation to submit closeout documents. Since the State's closeout documents were not due until 2019, Hawaii is included with the evaluation of the 2019 States.

² The National Background Check Program uses the term "State" as defined under 45 CFR 74.2. Thus, Puerto Rico is referred to as a "State" instead of a commonwealth in this report.

³ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

⁴ Ibid.

⁵ Summation by OIG's Division of Data Analytics regarding unique beneficiaries receiving services in 2019 from each of the care settings covered by the Program.

⁶ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

⁷ OIG, *Criminal Convictions for Nurse Aides with Substantiated Findings of Abuse, Neglect, and Misappropriation*, OEI-07-10-00422, October 2012.

⁸ OIG, *Vulnerabilities in Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio*, OEI-02-16-00570, July 2018.

⁹ Ibid.

¹⁰ Office of Disability, Aging, and Long-Term Care Policy, *Ensuring A Qualified Long-Term Care Workforce: From Pre-Employment Screens to On-the-Job Monitoring*, May 2006. Accessed at <https://aspe.hhs.gov/system/files/pdf/74676/LTCWqual.pdf> on September 14, 2006.

¹¹ The National Background Check Program was named in legislation as the Nationwide Program for National and State Background Checks on direct Patient Access Employees of Long-term Care Facilities and Providers. In this report we refer to it as the "National Background Check Program" or "Program".

¹² P.L. No. 111-148, § 6201.

¹³ P.L. No. 111-148, § 6201(a)(7).

¹⁴ OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

¹⁵ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016*, OEI-07-16-00160, April 2019.

¹⁶ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018*, OEI-07-18-00290, August 2019.

¹⁷ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 6.

¹⁸ Ibid.

¹⁹ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

²⁰ P.L. No. 111-148, § 6201(a).

²¹ P.L. No. 111-148, § 6201(a)(4)(B)(viii). Continuous monitoring means that if an employee receives a criminal conviction subsequent to the pre-employment background check, the State's law enforcement informs the State agency. In turn, the State agency informs the facility or provider that has hired the employee with the conviction. Once a State has implemented continuous monitoring of criminal convictions, there is no further need for employers to conduct future periodic criminal background checks on employees.

²² P.L. No. 111-148, § 6201(a)(4)(B)(v)(IV). A prospective employee who is determined ineligible shall be reported to the appropriate State or local agency.

²³ P.L. No. 111-148, § 6201(a)(3)(A).

²⁴ The grant solicitation document that CMS published defines "registries" as any State-based databases and nurse aide registries that identify those who have been approved by State requirements to provide care to residents or patients in long-term-care facilities or by providers of long-term-care services. These registries may include—but are not limited to—registries that list physicians, nurses, psychologists, and other professionals who are considered direct patient access employees. In addition, other registries or databases may include the Medicare Exclusion Database, the Fraud Investigation Database, the Healthcare Integrity and Protection Data Bank, or the National Practitioner Data Bank. CMS, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 50.

²⁵ CMS established regulations that prohibit long-term-care facilities and providers from employing individuals found guilty of abuse, neglect, or misappropriation of patient funds. "In 1998, Congress enacted [P.L.] 105-277, which allows long term care facilities to request the [FBI] search its fingerprint database for criminal history matches." CMS, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

²⁶ 42 U.S.C., § 1320a-7. This statute prevents facilities that receive Federal health care dollars from hiring individuals who have been excluded by the Secretary. Some of these convictions lead to mandatory exclusion. Others are "permissive"—allowing the Secretary discretion as to whether to exclude the person even if he or she has a conviction. These apply to both Federal and State convictions.

²⁷ P.L. No. 111-148, § 6201(a)(3)(A). Participating States must ensure that background checks include checks of (1) State criminal history records for relevant States and (2) the records of any proceedings that may contain disqualifying information, such as the proceedings of licensing and disciplinary boards and State Medicaid Fraud Control Units.

²⁸ Criteria for disqualification are based on Federal and State laws. Federal regulation prohibits Medicare and Medicaid nursing facilities from employing individuals who have been found guilty by a court of law of abusing, neglecting, or mistreating residents, or who have had a finding entered into the State nurse aide registry concerning abuse, neglect, or mistreatment of residents or misappropriation of residents' property (42 CFR, § 483.13(c)(1)(ii)). State laws vary with regard to the types of convictions that disqualify prospective employees from employment in long-term care.

²⁹ P.L. No. 111-148, § 6201(a)(6)(E).

³⁰ CMS, *Availability of Technical Assistance for Grantee States*. Accessed at <https://www.bgcheckinfo.org/about-nbcp/technical-assistance-overview> on April 6, 2020.

³¹ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 20.

³² OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

³³ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016*, OEI-07-16-00160, April 2019.

³⁴ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018*, OEI-07-18-00290, August 2019.

³⁵ Hawaii concluded participation in December 2018 and had 90 days following Program participation to submit closeout documents. Since the State's closeout documents were not due until 2019, Hawaii is included with the evaluation of the 2019 States.

³⁶ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded between 2013 and 2016*, OEI-07-16-00160, April 2019.